MAR 1 3 1956
HAROLD B. WILLEY, CL

Supreme Court of the United States

October Term, 1955

No. 757

ON APPEAL FROM THE JUDGMENT OF COMMONWEALTH OF MASSACHUSETTS, SUPREME JUDICIAL COURT FOR THE COMMONWEALTH

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN SS SUPERIOR COURT

No. 2109, 2110

COMMONWEALTH,

against

PETER ANTONIO,

Appellant.

No. 2111, 2112

COMMONWEALTH,

against

VIRGINIA F. ANTONIO,

Appellant.

JURISDICTION STATEMENT PURSUANT TO RULE 15

SAMUEL SILBIGER,
Counsel for Appellants,
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SUPREME PRINTING CO., INC., 114 WORTH STREET, N. Y. 13, BEEKMAN 3-2320
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Supreme Court of the United States

October Term, 1955

No.

On Appeal From the Judgment of Commonwealth of Massachusetts, Supreme Judicial Court for the Commonwealth

COMMONWEALTH OF MASSACHUSETTS

Franklin SS Superior Court

No. 2109, 2110

Commonwealth,

against

Peter Antonio,

Appellant.

No. 2111, 2112

Commonwealth,

against

Virginia F. Antonio,

Appellant.

Jurisdictional Statement Pursuant to Rule 15

1. (a) The opinion of the Supreme Judicial Court for the Commonwealth of Massachusetts was rendered on November 4, 1955, and filed on November 7, 1955 (r. 46, 47). The unofficial report of the opinion appears in Massachusetts Advance Sheets, 1955, Page 951. The opinion is

not yet officially reported. Said opinion is appended hereto, Appendix A.

(b) Jurisdiction of this Court is invoked on the following grounds:

1. Appellants were prosecuted and convicted of the crime of practicing medicine (chiropractic) without a license in alleged violation of the General Laws of the Commonwealth of Massachusetts, Chapter 112, Sections 2, 6, and 8.

2. The judgment or decree sought to be reviewed was rendered on November 4, 1955 and was filed on November 7, 1955 (r. 46).

3. Jurisdiction of this appeal is conferred on this Court by U. S. C. A., Title 28, Section 1257(2).

4. Cases sustaining the Court's jurisdiction are:

Yick Wo v. *Hopkins*, 118 U. S. 356, 373, 374;
Dobbins v. *Los Angeles*, 195 U. S. 223;
Nebbia v. *New York*, 291 U. S. 502;
New State Ice Co. v. *Liebman*, 285 U. S. 262;
Jay Burns Baking Co. v. *Bryan*, 264 U. S. 504, 513;
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Standard Oil Co. of California v. *Johnson*, 316 U. S. 481, 86 L. Ed. 1611.

5. The Statutes of the Commonwealth of Massachusetts, the constitutional validity of which as applied to Appellants is challenged are contained in Massachusetts General Laws, Chapter 112, Sections 2, 6 and 8, and their texts, so far as material, are set out in the Appendix B.

6. The appeal presents the following questions:

(a) Are General Laws of the Commonwealth of Massachusetts, Chapter 112, Sections 2, 6 and 8, as applied to

Appellants, repugnant to United States Constitution 14th Amendment, Section 1?

(1) Because of unjust discrimination and the denial to Appellants of the equal protection of the law?

(2) Because they arbitrarily, capriciously and unnecessarily limit Appellants' rights to enjoy life, liberty and property?

(3) Because they deny to Appellants their privileges and immunities as citizens of the United States?

(b) Have Appellants, by the rulings of the Court below, in the denial of their motions for directed verdicts, their requests for instructions to the jury and the rejection of proffered evidence, been denied due process of law?

(c) Complaints issued from the District Court of Franklin, Greenfield, Massachusetts, No. 2109, against Appellant Peter Antonio, and No. 2112 against Appellant Virginia F. Antonio, charged them respectively with practicing medicine during the three months next prior to March 25, 1954, in said Greenfield, without having presented Certificate to the Town Clerk in violation of Section 8, of Chapter 112 of the General Laws (Ter. Ed.) (r. 3742); and companion complaints No. 2110 against the Appellant Peter Antonio, and No. 2111 against Appellant Virginia F. Antonio, respectively, charging them during the same period of time with, "practicing medicine, to wit: chiropractic" without being lawfully licensed and registered under Chapter 112, Section 6, G. L. (r. 39, 40). Appellants were tried and convicted severally on each complaint and were fined $100 each on the charge of practicing medicine to wit: chiropractic, and $5 each on the charge of practicing medicine without registration of a Certificate with the Town Clerk. Execution of these sentences was stayed (r. 1).

The facts material to consideration of the questions presented are as follows: Peter Antonio and Virginia F.

Antonio are husband and wife. Both are native born citizens of the United States (r. 20, 22). Both served in the United States Armed Forces in World War II, Peter overseas and Virginia stateside. As partial compensation and reward for such services they were entitled under the G. I. Bill of Rights to receive an education and school maintenance, at Government expense. Exercising their rights and privileges, they attended the Palmer School of Chiropractic, at Davenport, Iowa, and took the regular course of subjects taught there, including anatomy, hygiene, taking of X-Rays, reading and analysis of X-Rays, and chiropractic technique and adjustment (r. 20, 22). The Government paid for their education and maintenance at said school (r. 21, 22). The school course extended over four (4) years of nine (9) months each, a total of 4,485 class hours (r. 20). They graduated from the Palmer School on October 20, 1952, each receiving the Degree of Chiropractic (r. 20). After graduation, they returned to Massachusetts and resided at 36 Abbott Street, Greenfield, where they opened an office for the practice of chiropractic. Neither Appellant was licensed to practice as a physician or registered as such under Section 2 of Chapter 112, G. L. (Ter. Ed.) or corresponding provisions of earlier statutes (r. 21, 23). Neither Sections 2, 6 or 8 of Chapter 112, G. L. (Ter. Ed.) nor any other statute of the Commonwealth of Massachusetts make any provision for the licensing and registration of chiropractic or chiropractors. There is in Massachusetts no Board of Registration of Chiropractors to whom an application for a license to practice chiropractic could be made (r. 22).

Though both appellants were licensed as masseurs in the Town of Greenfield (r. 44, 45), during the period of time covered by the complaints they practiced not as masseurs but as Chiropractors (r. 21, 23).

During the period of time mentioned in the complaints, appellants were consulted by and they examined and ad-

ministered chiropractic treatments to their patients; one patient had a strained back (r. 3), another patient a back injury (r. 4), one had arthritis in neck and spine (r. 6), one had a nervous breakdown (r. 8), and one patient who gave no case history (r. 8). Each patient paid $3 for each treatment received and some paid $15 for X-rays. No drugs or medicines of any kind were prescribed or administered (r. 6, 8, 9, 21, 22). Some of the patients testified they felt better after treatment (r. 4, 6, 8, 9). Appellants did not hold themselves out as physcians or surgeons (r. 8, 9, 22). One patient consulted appellants as masseurs (r. 8) and another patient understood that appellants were Chiropractors (r. 9).

The treatment administered by the appellants to the various patients consisted of taking X-rays (r. 3, 5, 6, 7 and 8), use of instrument known as nerve calograph (r. 3, 5, 7 and 8), and placing the patient upon a table and manipulation of the spine by a quick push or thrust of the hand, which caused the patient to feel a slight snap, accompanied by rubbing up and down with both hands, applying pressure (r. 3, 5, 6, 7, 8 and 9).

The defendants never claimed that they could cure human ailments, and maintained that the theory of chiropractice is that the cure of disease is effected solely by the human body itself without the use of drugs or medicines (r. 21 and 22). They gave the patients chiropractic adjustments (r. 22), and gave the patients the treatments to which they testified (r. 21).

Chiropractic is the art or science which teaches that there is an inborn intelligence within the human body that controls our growth, functions and repair that takes place within the body, using the nerve system as a means of communication, and that vertebra subluxation is the cause of disease. Subluxation exists when the vertebra becomes misaligned to the extent that it causes pressure upon the nerves, causing an interference or disruption of

the normal quantity flow of mental impulses between the brain and tissue cells. The reduction of the vetebra subluxation by means of what is commonly referred to as a chiropractic adjustment restores the offending vetebra back toward its normal position (r. 16 and 18).

The neuro-calometer is used on the entire spine to differentiate the heat between the two opposing nerve trunks that emerge from the spinal column, and the difference in heat is reflected on the neurocalograph (r. 17). The only thing that the Chiropractor does is to place the spinal column in proper adjustment so that the body itself can effect a cure (r. 19).

Chiropractic as a doctrine or a new thought was first discovered in 1895, and the first chiropractic school that was chartered in this country was the Palmer School of Chiropractic at Davenport, Iowa, in 1906 (r. 23).

The approved medical schools do not give any instruction in the Science of Chiropractic (r. 13). The Massachusetts Board of Registration in Medicine does not conduct any examination of the applicants for registrations as physicians or surgeons with respect to their knowledge of chiropractic (r. 13), but it does require as an educational prerequisite that applicants be graduated from a college or university or school of medicine authorized to confer a degree in medicine (r. 12). Physicians and surgeons recognize a system known as chiropractic (r. 13).

Tufts, Boston University and Harvard Medical School are the approved medical schools in Massachusetts (r. 13), but no school on the approved list in Massachusetts teaches the Science of Chiropractic (r. 15).

Physicians and surgeons are not trained in and do not understand chiropractic and are not qualified to administer chiropractic (r. 15-16).

There is no evidence that chiropractic is harmful or deleterious to the human body.

The questions of constitutional law were raised in the first instance in the Trial Court by requests to charge the jury, in exceptions to their denial, and by motion for a directed verdict (r. 37 and 41) and in the Appellate Court in the brief submitted in support of appellants' contentions that the statutes as construed by the Commonwealth of Massachusetts were unconstitutional in that they denied to the appellants the equal protection of the law and constituted arbitrary and capricious, discriminatory and unnecessary restrictions on the appellants' right to enjoy liberty and property as guaranteed by the fourteenth amendment to the Constitution of the United States. The questions of constitutional law so presented by the appellants were decided adversely to their contentions and the validity of the statutes was upheld by the highest Court of the Commonwealth. Opinion Appendix "A" post.

The federal questions presented on this appeal are substantial as they involve the rights of citizens to engage in a vocation for which they had been trained by the Federal Government, and in the pursuance of which they now find themselves subjected to arrest and imprisonment for doing the very things for which they were trained at government expense. The issues of constitutional law as presented herein have not been heretofore probed by this Court and the resolution of the questions require plenary consideration with the submission of briefs on the merits and oral argument.

Appended hereto as Appendix "C" is a copy of the judgment appealed from.

March 12, 1956.

SAMUEL SILBIGER,
Counsel for Appellants,
Windsor, Mass.

Appendix A

Opinion—Commonwealth vs. Peter Antonio (and three companion cases [1])

SPALDING, *J.* The defendants were found guilty by a jury on complaints charging them with violating G. L. (Ter. Ed.) c. 112, P 6, by practising medicine without being lawfully authorized to do so and without being registered under G. L. (Ter. Ed.) c. 112, P 2, as amended. They were also convicted on complaints charging them with practising medicine without having presented their certificates of registration to the clerk of the town where they had an office as required by G. L. (Ter. Ed.) c. 112, P 8, as amended. The cases come here on exceptions taken by each defendant to the denial of a motion for a directed verdict on each complaint, to the refusal of the judge to give certain requests for instructions, and to the exclusion of certain evidence. Neither defendant has argued separately the issues raised by the requests, as they concede that the questions presented are the same as those presented by their motions for directed verdicts.

There was evidence of the following. The defendants, husband and wife, reside in Greenfield. Both were duly licensed as masseurs in that town and they had an office in their home. Each was a graduate of the Palmer School of Chiropractic of Davenport, Iowa, and each held the degree of doctor of chiropractic conferred by that school. It is not disputed that on several occasions both treated persons for pay in accordance with chiropractic methods. The ailments treated included a strained back, arthritis of the neck and spine, and a mental disorder. In each instance the person treated was subjected to a test by a neuro-

[1] The companion cases are Commonwealth vs. Peter Antonio, Commonwealth vs. Virginia F. Antonio, and Commonwealth vs. Virginia F. Antonio.

calometer which is applied to the spine for the purpose of determining the condition of the vertebrae. In some instances X-ray pictures were taken. Thereafter a chiropractic "adjustment" was administered. The purpose of such an adjustment is to bring about a normal alignment of the vertebrae, for, according to the theory of chiropractic, "When no verterba is pressing on the nerves, there is no longer interference by that vertebra, and the normal * * * flow of the brain impulses is resumed, and this results in correction of the disease process—the cause of disease."

Neither defendant had filed a certificate of registration with the town clerk of Greenfield as was required by G. L. (Ter. Ed.) c. 112, P 8, and it was agreed that neither was authorized to practice medicine in this Commonwealth or was registered as a qualified physician under P 2.

The basic questions raised by the motions for directed verdicts and the requests for instructions are (1) that PP 2, 6, and 8 of G. L. (Ter. Ed.) c. 112, "construed as prohibiting the practice of chiropractic, are unconstitutional; (and) if construed as merely regulating the practice of chiropractic * * * (they) are * * * arbitrary * * * (and) discriminatory" and are likewise unconstitutional; and (2) that the phrases "practice medicine" and "practice of medicine" as used in c. 112 should, by reason of changed conditions, be less broadly construed than they were in the case of *Commonwealth* v. *Zimmerman*, 221 Mass. 184.

In *Commonwealth* v. *Zimmerman* the defendant was convicted under R. L. c. 76, P 8, the predecessor of G. L. (Ter. Ed.) c. 112, P 6, for practising medicine without being lawfully authorized. His defense was that he was a chiropractor and that his acts, which were quite similar to those of the defendants here, did not constitute a violation of the statute. In upholding the conviction the court speaking through Rugg, C. J., said, "A physical examination of the vertebrae, a decision whether they are in normal

position or not, and strong manual pressure upon them with the end of changing the position with reference to each other of those found to be irregular, and thereby relieving pressure upon nerves, may be found to have such relation to the cure or prevention of disease or the relief of pain as to constitute the practice of medicine" (pages 188-189).

We are asked, in effect, to overrule *Commonwealth* v. *Zimmerman,* but this we decline to do. Under that decision the trial judge here had no other course than to submit the cases to the jury. His instructions, which followed closely the language of this court in that case, were complete and accurate.

Nor is p. 6 as construed in the Zimmerman case unconstitutional. It was argued there, as here, that because certain classes were exempted, such as pharmacists and those practising Christian science, mind cure, massage and others, the statute was a denial of the equal protection of the laws. But that contention was held to be without merit. The defendants, nevertheless, invoke the principle set forth in *Vigeant* v. *Postal Telegraph Cable Co.* 260 Mass. 335, 342-343, that a statute valid at one time may become void at another time because of altered circumstances. We are told that there are now thirty-two thousand chiropractors practising in the United States and that chiropractic is now permitted in forty-four States. Hence, it is argued, the sicence of chiropractic is now firmly established and accepted, which was not the case forty years ago when the *Zimmerman* case was decided. But these are arguments which might more appropriately be addressed to the Legislature than to the courts. It follows that the judge did not err in refusing the defendants' requests for instructions and in denying their motions for directed verdicts.

A few questions of evidence remain. Dr. Conway, a member of the board of registration in medicine, was called as a witness by the defendants and was asked (1) whether

a chiropractor is permitted to administer to a patient in the hospitals of Massachusetts, (2) whether there was a cure in the form of a drug or medicine for the common cold, and (3) whether any of the approved medical schools in Massachusetts teach the science or art of chiropractic; and another witness was asked (4) whether he knew in what States chiropractic is recognized and regulated. All of these questions were excluded subject to the exceptions of the defendants who offered to prove that the answers would be (1) that no Massachusetts hospital permits a chiropractor to treat a patient, (2) that physicians have no cure in the form of a drug or medicine for the common cold, (3) that no medical school in Massachusetts teaches the science or art of chiropractic, and (4) that chiropractic is recognized and regulated in forty-four States. There was no error. None of these questions was relevant to the issues before the court.

Exceptions overruled.

Appendix B

Material Text of General Laws the Interpretation and Construction of Which Are Involved in this Proceeding.

CHAPTER 112

Registration of Certain Professions and Occupations

REGISTRATION OF PHYSICIANS AND SURGEONS

"Sec. 2. *Examination and Registration of Physicians; Revocation of Certificate, Reissue, etc.*—Applications for registration as qualified physicians, signed and sworn to by the applicants, shall be made upon blanks furnished by the board of registration in medicine, herein and in sections three to nine A, inclusive, called the board. Each applicant who shall furnish the board with satisfactory proof that he is twenty-one or over and of good moral character, that he possesses the educational qualifications required for graduation from a public high school, that he has completed two years of pre-medical collegiate work, including physics, chemistry and biology, in a college or university approved by a body constituted as provided in this section and herein referred to as the approving authority, that he has attended courses of instruction for four years of not less than thirty-two school weeks in each year, or courses which in the opinion of the board are equivalent thereto, in one or more legally chartered medical schools, and that he has received the degree of doctor of medicine, or its equivalent, from a legally chartered medical school having the power to confer degrees in medicine and approved by the approving authority, shall, upon payment of twenty-five dollars, be examined, and if found qualified by the board, be registered as a qualified physician and entitled to a certificate in testimony thereof, signed by the chairman and secretary. * * *

Appendix B

"Sec. 3. *Examinations.*—Examinations shall be in whole or in part in writing, in English, shall be of a scientific and practical character, shall include the subjects of anatomy, surgery, chemistry, biology, physics, physiology, pathology, obstetrics, gynaecology, psychiatry, practice of medicine and hygiene and shall be sufficiently thorough to test the applicants' fitness to practice medicine. * * *

"Sec. 6. *Penalties.*—Except as provided in section sixty-five, whoever, not being lawfully authorized to practice medicine within the commonwealth and registered under section two * * * practices or attempts to practice medicine in any of its branches * * * shall be punished by a fine of not less than one hundred nor more than one thousands dollars or by imprisonment for not less than one month nor more than one year or both. * * *

"Sec. 7. *Application Limited.*—Sections two to six, inclusive, and section eight shall not be held to discriminate against any particular school or system of medicine * * * They shall not apply * * * to registered pharmacists in prescribing gratuitously, clairvoyants or persons practicing hypnotism, magnetic healing, mind cure, massage, Christian science or cosmopathic method of healing, if they do not violate any provision of the preceding section.

"Sec. 8. *Certification of Registration to Be Recorded before Practice; Fees; Procedure; Penalties.*—No person shall enter upon, or continue in the practice of medicine within the commonwealth until he has presented to the clerk of the city or town where he has, or intends to have, an office or his usual place of business, his certificate of registration as a physician in the commonwealth, * * *. Whoever practices or attempts to practice medicine without complying with this section, * * *, shall be punished by a fine of not less than five nor more than one hundred dollars, * * * "

Appendix C

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT OF THE COMMONWEALTH

AT BOSTON

November 4, 1955

—o—

In the Case of the Commonwealth

vs.

PETER ANTONIO
(and three companion cases)

Pending in the Superior Court for the
County of Franklin

—o—

Ordered that the Clerk of said Court in said County make the following entry on each of said cases in the docket of said court:

Viz. Exceptions overruled.

By the Court,

FREDERICK L. QUINLAN, Clerk.

MAR 13 1956

Supreme Court of the United States

October Term, 1955

No. 758

On Appeal From the Judgement of the Commonwealth of Massachusetts, Supreme Judicial Court for the Commonwealth

COMMONWEALTH OF MASSACHUSETTS

Superior Court

Suffolk, ss. #69146 Eq.

Massachusetts Chiropractic Laymen's Assoc., Inc., John William Connors and Frank Vincent Thomas,
Appellants,

vs.

George Fingold, Attorney General of The Commonwealth of Massachusetts and The Commonwealth of Massachusetts,
Appellees.

JURISDICTION STATEMENT PURSUANT TO RULE 15

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Supreme Court of the United States

October Term, 1955

No.

ON APPEAL FROM THE JUDGEMENT OF THE COMMONWEALTH OF MASSACHUSETTS, SUPREME JUDICIAL COURT FOR THE COMMONWEALTH

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT

Suffolk, ss. #69146 Eq.

MASSACHUSETTS CHIROPRACTIC LAYMEN'S ASSOC., INC., JOHN WILLIAM CONNORS and FRANK VINCENT THOMAS,

Appellants,

vs.

GEORGE FINGOLD, Attorney General of The Commonwealth of Massachusetts and THE COMMONWEALTH OF MASSACHUSETTS,

Appellees.

Jurisdictional Statement Pursuant to Rule 15

1. (a) The opinion of the Supreme Judicial Court for the Commonwealth of Massachusetts was rendered on November 4, 1955, and filed on November 4, 1955 (r. 17). The unofficial report of the opinion appears in Mass. Advance Sheets 1955, p. 955. The opinion is not yet officially reported, but is appended hereto as Appendix "A".

(b) Jurisdiction of this Court is invoked on the following grounds:

(1) Appellants filed a petition for a Declaratory Judgment that G. L. (Ter. Ed.), Chapter 112, which forbids

the practice of medicine without a license as a physician and surgeon is unconstitutional as applied to chiropractors; that par. 2-8 of G. L. (Ter. Ed.) C. 112 do not regulate the practice of chiropractic in the Commonwealth and if construed to regulate the practice of chiropractic and restricting it to registered physicians, then the sections bear no reasonable relation to the public welfare and are unconstitutional. They also petitioned that the Attorney General and all subordinate law-enforcement officers be enjoined from arresting and prosecuting chiropractors as violators of G. L. (Ter. Ed.) C. 112, par. 6.

Demurrers to said petitions were interposed by appellees and interlocutory decrees were entered sustaining the demurrers. Final decree was entered dismissing the bill, from which appeal was taken to the Supreme Judicial Court of Massachusetts, and while the Court overruled the interlocutory decrees which sustained the demurrers, it sustained the final decree dismissing the bill.

2. The judgment or decree sought to be reviewed was rendered on November 4, 1955, and filed on the same date (r. 16).

3. Jurisdiction of this appeal is conferred on this Court by U. S. C. A., Title 28, section 1257(2).

4. Cases sustaining the Court's jurisdiction are:

Yick Wo v. *Hopkins*, 118 U. S. 356, 373, 374;
Dobbins v. *Los Angeles*, 195 U. S. 223;
Nebbia v. *New York*, 291 U. S. 502;
New State Ice Co. v. *Liebman*, 285 U. S. 262;
Atchison, T. & S. F. Ry. Co. v. *Public Utilities Comm.*, 346 U. S. 346, 98 L. Ed. 51;
Joint Anti-Fascist Refugee Com. v. *McGrath*, 341 U. S. 123, 141, 95 L. Ed. 817, 837;
American School of Magnetic Healing v. *McAnnulty*, 187 U. S. 84.

5. The statutes of the Commonwealth of Massachusetts, the constitutional validity of which are challenged by the appellants are contained in Mass. G. L. (Ter. Ed.) C. 112, sections 2, 6 and 8, and their texts so far as material are set forth in the Appendix "B" hereto.

6. The appeal presents the following questions:

(a) Are General Laws of the Commonwealth of Massachusetts, C. 112, sections 2, 6 and 8 as applied to chiropractors repugnant to United States Constitution, fourteenth amendment, section 1?

(1) Because they unjustly discriminate against chiropractors and deny to them the equal protection of the law?

(2) Because they arbitrarily, capriciously and unnecessarily limit chiropractors in their rights to enjoy life, liberty and property?

(3) Because they deny to appellants their privileges and immunities as citizens of the United States?

(b) Have appellants been denied due process of law?

(c) Plaintiffs' bill sets forth their respective status (r. 2); and alleges that Chiropractic is a modern scientific method of healing (r. 2); that General Laws, Chapters 112 and 140 provide for licensing, registration, and regulation of physicians and surgeons, osteopaths, chiropodists (podiatrists), physical therapists, pharmacists, dentists, veterinarians, optometrists, nurses, embalmers and funeral directors, barbers, hair dressers, manicurists, and masseurs (r. 3), and prescribe the educational qualifications and standards therefor; that no statute makes a study of or training in the science of Chiropractic, a condition to obtaining such licensure (r. 3); that no statute prescribes any educational qualifications and standards for the practice of Chiropractic (r. 3); that Chiropractic has been recognized as a science, separate and distinct from the science of medicine in forty-four states which enacted

statutes for its regulation and control and the registration of Chiropractors (r. 4); that the Commonwealth of Massachusetts is one of four states where Chiropractic is unrecognized and its practice unregulated (r. 4); that repeated attempts to secure the enactment of reasonable legislation for the regulation and control of the practice of Chiropractic in the Commonwealth of Massachusetts proved futile (r. 4); that respondents construe the said statutes (Gen. Laws, Chap. 112, Sections 2 and 8) as prohibiting the practice of Chiropractic in the Commonwealth of Massachusetts or in the alternative as regulating and restricting its practice to duly licensed and registered physicians and surgeons (r. 4); that approved schools and colleges that confer the degree of Doctor of Medicine (a prerequisite to registration as a qualified physician), do not teach subjects or give training necessary to qualify one to practice Chriropractic, and schools or colleges which confer a degree in Chiropractic do not teach subjects or give training to qualify one to practice medicine; that Johns Hopkins Medical School is typical of approved medical schools and the Palmer School of Chiropractic is typical of Chiropractic Schools, and specifies the subjects taught in said schools and the number of class hours devoted thereto (r. 4-6); that based on their interpretation of these statutes, respondents have caused the arrest of Peter Antonio and Virginia Antonio on the charge of practicing medicine, Chiropractic, without a license and that they were convicted in Superior Court, Franklin County, and appeals from such conviction are pending in this Court; that Russell W. Wood and Arthur Gaucher have been arrested on similar charges respectively in Hampden and Worcester Counties and were awaiting trial in Superior Court;* and respondents threatened to cause similar arrests and prosecutions of all persons who practice Chiropractic in

* Russell M. Wood and Arthur Gaucher have been tried, convicted and fined and their appeals to this court are in process.

the Commonwealth of Massachusetts (r. 6); that the action of the responents denies petitioner John William Connors the right to practice his profession of Chiropractic as a means of livelihood, and deprives petitioner Frank Vincent Thomas and the enrolled members of petitioner Massachusetts Chiropractic Laymen's Association, Inc. and other citizens of Massachusetts of the right to obtain chiropractic services of competent and qualified Chiropractors, in contravention of the fourteenth amendment to the Constitution of the United States; that physicians and surgeons have no cure for many ailments causing human suffering and death, including colds, tuberculosis, rheumatic heart, diabetes, multiple sclerosis, migraine, cancer, poliomyelitis, arthritis, and many other diseases and that through chiropractic treatment many persons so suffering have been relieved, benefited and cured (r. 7); that in hospitals, publicly maintained in the Commonwealth, taxpayers as patients, even after physicians and surgeons abandon all hope and pronounce a patient incurable, cannot obtain chiropractic ministration and the aggrieved family and relatives are denied the knowledge and consolation that all known scientific methods and avenues have been employed to help the patient throughout his illness (r. 7); that the law as construed by respondents bears no real or substantial relation to the protection of the public health and is arbitrary, discriminatory, capricious and unreasonable (r. 7). Petitioners' motion to amend the bill by the addition of a specific allegation to the effect that an actual controversy exists between petitioners and respondents was denied (r. 10). The petition prays for the following relief:

That it be adjudged that General Laws, Chapter 112, Sections 2 to 8 do not prohibit the practice of Chiropractic in the Commonwealth (r. 7); that they do not regulate such practice (r. 8); that such laws construed as prohibiting the practice of Chiropractic are unconstitutional (r. 8); that if construed as regulating the practice of Chiropractic

the restrictions are harsh, unnecessary, arbitrary, irrational and unreasonable and discriminate against Chiropractors and the law constitutes class legislation and is unconstitutional (r. 8); that the practice of Chiropractic is not unlawful in the Commonwealth of Massachusetts (r. 8); and that the respondents and all subordinate law enforcement officers be permanently enjoined from arresting and prosecuting Chiropractors as violators of said law (r. 9).

The questions of constitutional law presented in this case are very substantial. The determination is not dependent upon any fluid facts. As conceded by the demurrers to the petitions, for the purposes of this case, the facts as alleged in the petition must be deemed to be established and true and the question involved is whether on such facts so established the statutes of Massachusetts challenged by appellants conflict with the higher law of the Constitution of the United States, and if there is such conflict it becomes the duty of the Court to apply the higher law of the Constitution.

Of course, under the so-called "police power" a state legislature may enact laws which are immune from the limitations of the 14th Amendment to the Constitution of the United States, but such immunity is not absolute and is relative to the needs and the immunity from the restrictions cannot be extended beyond what is necessary to enable the legislature to protect the public health, morals, safety, and welfare. Under the guise of protecting the public, the legislature cannot arbitrarily interfere with private business or professions or prohibit lawful occupations or impose unreasonable or unnecessary restrictions upon them.

Jay Burns Baking Co. v. *Bryan*, 264 U. S. 504, 513;
New State Ice Co. v. *Liebman*, 285 U. S. 262.

It becomes the province of the Court, therefore, where the constitutionality of a statute is challenged, to reach a determination of the fact as to whether or not the legislation is unreasonable or an unnecessary restriction upon the right of an individual to engage in a lawful business or profession. See *Barsky* v. *Board of Regents*, 327 U. S. 442, 98 L. Ed. 829.

The issues of constitutional law as presented herein have not been heretofore probed by this Court and are so substantial as to require plenary consideration with the submission of briefs on the merits and oral argument. Appended hereto as Appendix "C" is a copy of the judgment appealed from.

March 12, 1956.

SAMUEL SILBIGER,
Counsel for Appellants,
Windsor, Mass.

Appendix A

Opinion—Massachusetts Chiropractic Laymen's Association, Inc. & others vs. Attorney General & another.

SPALDING, J. The objectives of this bill for declaratory relief are to obtain a declaration (1) that chiropractic is not the practice of medicine; (2) that even if it is the practice of medicine, then G. L. (Ter. Ed.) c. 112, p. 6, which forbids the practice of medicine without a license is unconstitutional as applied to chiropractors; (3) that pp. 2 to 8 of G. L. (Ter. Ed.) c. 112 do not regulate the practice of chiropractic in the Commonwealth; and (4) that even if pp. 2 to 8 of c. 112 be construed as regulating the practice of chiropractic but restricting it to registered physicians, then those sections bear no reasonable relation to the public welfare and are unconstitutional. The plaintiffs also ask that the Attorney General and all subordinate law enforcement officers be enjoined from arresting and prosecuting chiropractors as violators of G. L. (Ter. Ed.) c. 112, p. 6, in practicing without a license.[1]

The defendants demurred and interlocutory decrees were entered sustaining the demurrers. The case comes here on the plaintiffs' appeal from a final decree dismissing the bill.

Upon demurrer, a bill stating a case for declaratory relief is good, and no question of discretion whether to grant relief is open. *Burnes* v. *Metropolitan District Commission*, 325 Mass. 731, 733, and cases cited. Despite the contention of the Attorney General to the contrary, we are of opinion that the bill sufficiently alleges the existence of an actual controversy and makes out a case for declaratory

[1] The Commonwealth was made a party defendant by amendment.

relief at least with respect to the plaintiff Connors.[1] Accordingly the judge ought not to have sustained the demurrers to the bill. But that would not have meant that the plaintiffs were entitled as of right to the determination sought, since G. L. (Ter. Ed.) c. 231A, p. 3, inserted by St. 1945, c. 582, p. 1, provides that the "court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceedings or for other sufficient reasons. The reasons for such refusal shall be stated in the record." Sufficient reasons now exist for refusing to make a declaratory decree and the case should not be further heard. The issues presented are questions of law and in substance are the same as those determined in our decision in *Commonwealth* v. *Antonio,* Mass. Adv. Sh. (1955) 951. There is, therefore, no need for declaratory relief. Accordingly, the court below should refuse to grant the relief prayed for, but, as required by p. 3, the reason for such refusal should be stated in the record. Upon the entry in the record of such a statement the final decree dismissing the bill is to stand. The interlocutory decrees sustaining the demurrers are reversed.

So ordered.

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[1] The plaintiffs are the Massachusetts Chiropractic Laymen's Association, Inc., a nonprofit corporation having for its purpose the securing of the properly regulated practice of chiropractic in the Commonwealth; one Thomas, a citizen of the Commonwealth; and one Connors, who holds a degree of doctor of chiropractic and who desires to practice chiropractic in this Commonwealth.

Appendix A-1

Opinion—Commonwealth vs. Peter Antonio (and three companion cases [1])

SPALDING, *J.* The defendants were found guilty by a jury on complaints charging them with violating G. L. (Ter. Ed.) c. 112, p. 6, by practising medicine without being lawfully authorized to do so and without being registered under G. L. (Ter. Ed.) c. 112, p. 2, as amended. They were also convicted on complaints charging them with practising medicine without having presented their certificates of registration to the clerk of the town where they had an office as required by G. L. (Ter. Ed.) c. 112, p. 8, as amended. The cases come here on exceptions taken by each defendant to the denial of a motion for a directed verdict on each complaint, to the refusal of the judge to give certain requests for instructions, and to the exclusion of certain evidence. Neither defendant has argued separately the issues raised by the requests, as they concede that the questions presented are the same as those presented by their motions for directed verdicts.

There was evidence of the following. The defendants, husband and wife, reside in Greenfield. Both were duly licensed as masseurs in that town and they had an office in their home. Each was a graduate of the Palmer School of Chiropractic of Davenport, Iowa, and each held the degree of doctor of chiropractic conferred by that school. It is not disputed that on several occasions both treated persons for pay in accordance with chiropractic methods. The ailments treated included a strained back, arthritis of the neck and spine, and a mental disorder. In each instance the person treated was subjected to a test by a neuro-

[1] The companion cases are Commonwealth vs. Peter Antonio, Commonwealth vs. Virginia F. Antonio, and Commonwealth vs. Virginia F. Antonio.

calometer which is applied to the spine for the purpose of determining the condition of the vertebrae. In some instances X-ray pictures were taken. Thereafter a chiropractic "adjustment" was administered. The purpose of such an adjustment is to bring about a normal alignment of the vertebrae, for, according to the theory of chiropractic, "When no vertebra is pressing on the nerves, there is no longer interference by that vertebra, and the normal * * * flow of the brain impulses is resumed, and this results in correction of the disease process—the cause of disease."

Neither defendant had filed a certificate of registration with the town clerk of Greenfield as was required by G. L. (Ter. Ed.) c. 112, p. 8, and it was agreed that neither was authorized to practise medicine in this Commonwealth or was registered as a qualified physician under p. 2.

The basic questions raised by the motions for directed verdicts and the requests for instructions are (1) that pp. 2, 6, and 8 of G. L. (Ter. Ed.) c. 112, "construed as prohibiting the practice of chiropractic, are unconstitutional; (and) if construed as merely regulating the practice of chiropractic * * * (they) are * * * arbitrary * * * (and) discriminatory" and are likewise unconstitutional; and (2) that the phrases "practice medicine" and "practice of medicine" as used in c. 112 should, by reason of changed conditions, be less broadly construed than they were in the case of *Commonwealth* v. *Zimmerman*, 221 Mass. 184.

In *Commonwealth* v. *Zimmerman* the defendant was convicted under R. L. c. 76, p. 8, the predecessor of G. L. (Ter. Ed.) c. 112, p. 6, for practising medicine without being lawfully authorized. His defense was that he was a chiropractor and that his acts, which were quite similar to those of the defendants here, did not constitute a violation of the statute. In upholding the conviction the court speaking through Rugg, C. J., said, "A physical examination of the vertebrae, a decision whether they are in normal position

or not, and strong manual pressure upon them with the end of changing the position with reference to each other of those found to be irregular, and thereby relieving pressure upon nerves, may be found to have such relation to the cure or prevention of disease or the relief of pain as to constitute the practice of medicine" (pages 188-189).

We are asked, in effect, to overrule *Commonwealth* v. *Zimmerman,* but this we decline to do. Under that decision the trial judge here had no other course than to submit the cases to the jury. His instructions, which followed closely the language of this court in that case, were complete and accurate.

Nor is p. 6 as construed in the Zimmerman case unconstitutional. It was argued there, as here, that because certain classes were exempted, such as pharmacists and those practising Christian science, mind cure, massage and others, the statute was a denial of the equal protection of the laws. But that contention was held to be without merit. The defendants, nevertheless, invoke the principle set forth in *Vigeant* v. *Postal Telegraph Cable Co.* 260 Mass. 335, 342-343, that a statute valid at one time may become void at another time because of altered circumstances. We are told that there are now thirty-two thousand chiropractors practising in the United States and that chiropractic is now permitted in forty-four States. Hence, it is argued, the science of chiropractic is now firmly established and accepted, which was not the case forty years ago when the *Zimmerman* case was decided. But these are arguments which might more appropriately be addressed to the Legislature than to the courts. It follows that the judge did not err in refusing the defendants' requests for instructions and in denying their motions for directed verdicts.

A few questions of evidence remain. Dr. Conway, a member of the board of registration in medicine, was called as a witness by the defendants and was asked (1) whether

a chiropractor is permitted to administer to a patient in the hospitals of Massachusetts, (2) whether there was a cure in the form of a drug or medicine for the common cold, and (3) whether any of the approved medical schools in Massachusetts teach the science or art of chiropractic; and another witness was asked (4) whether he knew in what States chiropractic is recognized and regulated. All of these questions were excluded subject to the exceptions of the defendants who offered to prove that the answers would be (1) that no Massachusetts hospital permits a chiropractor to treat a patient, (2) that physicians have no cure in the form of a drug or medicine for the common cold, (3) that no medical school in Massachusetts teaches the science or art of chiropractic, and (4) that chiropractic is recognized and regulated in forty-four States. There was no error. None of these questions was relevant to the issues before the court.

Exceptions overruled.

Appendix B

Material Text of General Laws the Interpretation and Construction of Which Are Involved in this Proceeding.

CHAPTER 112

Registration of Certain Professions and Occupations

REGISTRATION OF PHYSICIANS AND SURGEONS

"Sec. 2. *Examination and Registration of Physicians; Revocation of Certificate, Reissue, etc.*—Applications for registration as qualified physicians, signed and sworn to by the applicants, shall be made upon blanks furnished by the board of registration in medicine, herein and in sections three to nine A, inclusive, called the board. Each applicant who shall furnish the board with satisfactory proof that he is twenty-one or over and of good moral character, that he possesses the educational qualifications required for graduation from a public high school, that he has completed two years of pre-medical collegiate work, including physics, chemistry and biology, in a college or university approved by a body constituted as provided in this section and herein referred to as the approving authority, that he has attended courses of instruction for four years of not less than thirty-two school weeks in each year, or courses which in the opinion of the board are equivalent thereto, in one or more legally chartered medical schools, and that he has received the degree of doctor of medicine, or its equivalent, from a legally chartered medical school having the power to confer degrees in medicine and approved by the approving authority, shall, upon payment of twenty-five dollars, be examined, and if found qualified by the board, be registered as a qualified physician and entitled to a certificate in testimony thereof, signed by the chairman and secretary. * * *

Appendix B

"Sec. 3. *Examinations.*—Examinations shall be in whole or in part in writing, in English, shall be of a scientific and practical character, shall include the subjects of anatomy, surgery, chemistry, biology, physics, physiology, pathology obstetrics, gynaecology, psychiatry, practice of medicine and hygiene and shall be sufficiently thorough to test the applicants' fitness to practice medicine. * * *

"Sec. 6. *Penalties.*—Except as provided in section sixty-five, whoever, not being lawfully authorized to practice medicine within the commonwealth and registered under section two * * * practices or attempts to practice medicine in any of its branches * * * shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment for not less than one month nor more than one year or both. * * *

"Sec. 7. *Application Limited.*—Sections two to six, inclusive, and section eight shall not be held to discriminate against any particular school or system of medicine * * *. They shall not apply * * * to registered pharmacists in prescribing gratuitously, clairvoyants or persons practicing hypotism, magnetic healing, mind cure, massage, Christian science or cosmopathic method of healing, if they do not violate any provisions of the preceding section.

"Sec. 8. *Certification of Registration to Be Recorded before Practice; Fees; Procedure; Penalties.*—No person shall enter upon, or continue in the practice of medicine within the commonwealth until he has presented to the clerk of the city or town where he has, or intends to have, an office or his usual place of business, his certificate of registration as a physician in the commonwealth, * * *. Whoever practices or attempts to practice medicine without complying with this section, * * *, shall be punished by a fine of not less than five or more than one hundred dollars, * * *"

Appendix C

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT FOR THE COMMONWEALTH

at Boston, November 4, 1955

In the case

MASSACHUSETTS CHIROPRACTIC LAYMEN'S ASSOC., INC. AND OTHERS,

vs.

ATTORNEY GENERAL & ANOTHER.

Pending in the Superior Court for the County of Suffolk.

Ordered that the Clerk of said Court in said county make the following entry on the said case in the docket of said Court:

Viz., "Interlocutory Decrees sustaining Demurrers reversed.

Upon the entry in the record of a statement showing the reason for the refusal of the court below to grant declaratory relief, the final decree dismissing the bill is to stand."

By the Court,

FREDERICK L. QUINLAN,
Clerk.

November 4, 1955.

No. 757. ANTONIO ET UX. *v.* MASSACHUSETTS; and

No. 758. MASSACHUSETTS CHIROPRACTIC LAYMEN'S ASSOCIATION, INC., ET AL. *v.* FINGOLD, ATTORNEY GENERAL, ET AL. Appeals from the Supreme Judicial Court of Massachusetts. *Per Curiam:* The appeals are dismissed for want of a substantial federal question. *Samuel Silbiger* for appellants. Reported below: 333 Mass. 175, 179, 129 N. E. 2d 914, 130 N. E. 2d 101.

No. 721 [illegible]